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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/014,727	12/10/2001	David Hedman	871870-6	6900
23879	7590	05/29/2007		
BRIAN M BERLINER, ESQ O'MELVENY & MYERS, LLP 400 SOUTH HOPE STREET LOS ANGELES, CA 90071-2899			EXAMINER ROWAN, KURT C	
			ART UNIT 3643	PAPER NUMBER
			MAIL DATE 05/29/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/014,727	Applicant(s) HEDMAN ET AL.	
	Examiner Kurt Rowan	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-23, 26-30, 36-40, 42 and 43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-23, 26-30, 36-40, 42-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Terminal Disclaimer

1. The terminal disclaimer filed on June 9, 2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of US 6327812 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 18, 20-21, 23, 26-29, 36, 40, and 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forbes '329 in view of Brenner et al. (US 5806238) for substantially the same reasons stated in the last Office Action.

The patents to Forbes and Brenner show insect destroying methods and Forbes has been discussed in the first Office Action. In reference to claims 18, 20, and 26, Forbes shows all of the method steps recited such as providing an ingress duct 51, heating a gas by burner 25 to a temperature lethal to a predetermined species as disclosed by Forbes in column 4, lines 22-63. Forbes shows directing the heated gas into the enclosure in Fig. 1 using ingress duct 41. Forbes show extracting heated gas in column 4, lines 8-12. Forbes does not disclose extracting heat killed organisms. The patent to

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Brenner shows using heat and a vacuum to destroy insects. Brenner who discloses a filter system 84 with four filters 86 and a HEPA filter 108. Hence, it would have been obvious to provide Forbes with an extraction step as shown by Brenner who vents and filters the outflow for the purpose of removing dead organisms. In reference to claim 36, Forbes discloses venting through a ventilation duct in column 3, lines 16-17. In reference to claim 37, it would have been obvious to provide the method of Forbes as modified by Brenner with a filter system 84 as disclosed by Brenner to trap organisms killed during the operation of the method recited. In reference to claim 38, it would have been obvious to return filtered air to the interior since Forbes discloses recirculating air in column 2, lines 50-53. In reference to claim 39, Brenner discloses using suction to pull air from an enclosure and it follows that the filter be placed before the suction to ensure proper operation as shown by Brenner. Hence, it would have been obvious to provide the method of killing organisms as shown by Forbes with suction downstream of the filter as shown by Brenner to collect organisms and insects including insect particles in the filter. In reference to claim 40, Forbes discloses heating outside the enclosed structure in Figure 1 noting burner 25. In reference to claim 42, Forbes shows directing heated gas into the interior portion using a duct 51. In reference to claim 43, Forbes discloses heating for about one hour in column 4, line 54.

3. Claims 18, 20, 21, 23, 26-29, 36-40, 42-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forbes in view of Montellano for substantially the same reasons as stated in the last Office Action.

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The patents to Forbes and Montellano show insect and pest destroying devices and have been discussed in the last Office Action. It would have been obvious in reference to claims 18, 20, 21, 23, 26-29, 36-40, and 42-43 to provide Forbes with a filter screen as shown by Montellano for the purpose of collecting dead insects to assess the effectiveness of the system.

Response to Arguments

Applicant's arguments filed Feb. 28, 2007 have been fully considered but they are not persuasive. Applicant argues that Forbes does not disclose any type of filtration and that Brenner et al. discloses that the filtering of air is before heating it rather than filtering the air after applying the heat. However, Brenner discloses in column 3, lines 9-12, filter means providing an exhaust air which is free of most particulate matter including allergens, dust, debris, liquid, fine dust, pests, and objects. As of further importance, Brenner discloses seeks to aspirate pests and biological contaminants without exhausting these contaminants back into the environment from which they were removed as disclosed in column 3, lines 1-5. This is exactly the same problem applicant is concerned with. Brenner discloses removing suspended particles that are a result of a heat eradication process noting that Brenner discloses a hand held heater/air exhaust assembly 146. Since Brenner is directed to the same problem as the present invention and contain a suggestion for the combination, the proposed combination is proper. Applicant argues that claim 18 has been amended to clarify that the organisms are killed as a result of the heated air directing step and that the filtering step serves to remove particulate remains of the killed organisms. However, Forbes kills the

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organisms as a result of the heated air directing step and both Brenner and Montellano remove particulate remains of the killed organisms during a filtering step. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the knowledge to combine the references is not only generally available to one of ordinary skill in the art, but also Brenner provides a teaching, suggestion and motivation to combine the references since Brenner states that exhausting contaminants back into the environment is avoided with filter system employed noting the use of a HEPA filter. As to the declaration by Dr. Abbott, the examiner does not disagree with the increased airborne microorganism levels as a result of flood damage and that traditional methods to treat buildings contaminated by mold, bacteria, termites, dust mites may increase the level of bioaerosol particulate matter. However, the objective evidence of nonobviousness is not commensurate in scope with the claims. As to the commercial success, applicant has not provided objective evidence as to market share, and cost of advertising which precludes the declaration achieving a desired result. Hence applicant has not proved the secondary considerations to a level that would overcome the art of record as a whole. Thus, the current rejections under 35 USC 103 remain.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Kurt Rowan
Primary Examiner
Art Unit 3643

KR